

No. 14756

United States
Court of Appeals
for the Ninth Circuit

MARLIN FERRIS GOGGANS, Also Known as M.
F. GOGGANS,

Appellant,

vs.

RETA ORBORN,

Appellee.

Supplemental
Transcript of Record

Appeal from the District Court
for the District of Alaska,
Third Division

FILE

APR 11 1956

PAUL P. O'BRIEN, CLERK



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1872

Received of the Treasurer of the
Board of Education the sum of
\$100.00 for the year 1872

Witness my hand and seal this
10th day of January 1872

John A. [Signature]

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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Attorneys for Appellee.

GEORGE B. GRIGSBY,
Central Bldg., Anchorage, Alaska,
Attorney for Appellant.



[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF

(Oct. 2, 1951)

United States of America,
Territory of Alaska—ss.

Reta Osborn Goggans, being first duly sworn, upon her oath deposes and says:

That your affiant and the defendant herein are the joint owners of a painting and contracting business and a retail paint, glass and wallpaper store situated in the Central Building, Third and G Streets, Anchorage, Alaska, known as the M. F. Goggans Co.; that since for some time prior to the inception of this action your affiant has been denied access to the records and files of said businesses, and since the inception of this action your affiant has only had fragmentary reports as to the financial status of the businesses above mentioned, and that your affiant is informed and believes and so alleges the facts to be that the defendant has, in violation of the stipulation on file herein, expended funds belonging to the businesses above mentioned for his own personal use, all to the detriment of the plaintiff, and that unless an early adjudication of this matter is had between the parties, that the defendant will continue, as affiant believes, to dissipate the funds of the said businesses in violation of this Court's order and the stipulation on file herein.

That to the best knowledge and belief of your affiant has, since the service on him of the restraining order in this action up to and including the 28th day of August, 1951, the defendant has dissipated funds of the businesses above mentioned, over and above that allowed by order of this Court and stipulation between the parties, in the amount of \$747.78, if not more.

/s/ RETA OSBORN GOGGANS,

Subscribed and sworn to before me this 29th day of September, 1951.

[Seal] /s/ JOHN C. HUGHES,
Notary Public for Alaska.

My commission expires: 4/9/55.

[Endorsed]: Filed Oct. 2, 1951.

In the District Court for the Territory of Alaska,
Third Division
No. A-7094

RETA OSBORN GOGGANS,
Plaintiff,

vs.

MARLIN FERRIS GOGGANS, Also Known as
M. F. GOGGANS,
Defendant.

RESTRAINING ORDER PENDENTE LITE

Upon consideration of the stipulation of the respective parties hereto and upon advice of counsel,

the Court having been fully advised in the premises,
Now Therefore

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That the defendant shall pay to the plaintiff from the assets of the partnership business known as the M. F. Goggans Co. the sum of \$100.00 per week as a drawing until such time as a final settlement or adjudication of the above captioned cause is had between the parties, said sum to be paid by check or cash to the plaintiff at the office of Davis & Renfrew or mailed to the plaintiff in care of said firm at Box 477, Anchorage, Alaska.

2. That the defendant M. F. Goggans shall be entitled to receive and draw out of the assets of the M. F. Goggans Co. the sum of \$150.00 per week pending the final settlement or adjudication of the above captioned cause.

3. That the defendant is hereby restrained and enjoined from accosting, annoying or molesting the plaintiff in this action in any manner whatsoever, or from interfering with the plaintiff in her possession of the family home at 1547 H Street, Anchorage, Alaska, pending the final adjudication of the above captioned cause.

4. That the defendant is hereby restrained and enjoined, during the pendency of this action, from disposing of any of the assets of the M. F. Goggans Co. or from dissipating the cash or bank accounts of the said company other than such sales or ex-

penditures of the cash assets of the said company normal or customary in the usual course of trade thereof.

5. That each of the parties hereto is, during the pendency of this action, hereby ordered to deliver each to the other any mail or personal property now in their possession or hereafter to come into their possession and that each of the parties hereto is hereby ordered to refrain from writing checks on the bank accounts of the M. F. Goggans Co. or otherwise disposing of the assets of the said company except as is hereinabove ordered.

Done in Open Court at Anchorage, Alaska, this 10th day of August, 1951.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed and entered Aug. 10, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF
(Oct. 10, 1951)

United States of America,
Territory of Alaska—ss.

Reta Osborn Goggans, being first duly sworn, upon her oath deposes and says:

That she is the plaintiff in the above-entitled action; that on the 2nd day of October, 1951, a

stipulation between the respective counsel for the parties hereto was entered into and filed in the above-entitled cause, stipulating that the deposition of the defendant above named might be taken on the 4th day of October, 1951, at the hour of 7:45 p.m. upon oral examination for the purpose of discovery as set out in Rule 26 of the Federal Rules of Civil Procedure; that pursuant to said stipulation, notice of taking deposition was issued directing M. F. Goggans to appear before Lorraine Clarke, a Notary Public in and for the Territory of Alaska, at Room 133, Federal Building, Anchorage, Alaska, on the 4th day of October, 1951, at the hour of 7:45 p.m. for such examination; that on the 2nd day of October, 1951, subpoena duces tecum was issued out of this Court directing the defendant M. F. Goggans to bring with him at said time and place a true and correct financial statement of the business of the M. F. Goggans Co. for the year 1951 to and including the 30th day of September, 1951; that M. F. Goggans appeared as directed in the notice of taking of deposition at the time and place above mentioned but that he failed and refused to bring with him a true and correct financial statement of the business of the M. F. Goggans Co. for the year 1951 to and including the 30th day of September, 1951; that said M. F. Goggans testified under oath that he did not have the said financial statement for the reason that it had not been prepared and that he did not know when said financial statement would be prepared but that it would be prepared at some future date.

That on numerous and sundry occasions during the months of August and September, 1951, the attorney for the defendant and the defendant himself, through his servant, agent and employee, one Vernon H. Laird, bookkeeper for M. F. Goggans Co., promised the attorneys for the plaintiff that a financial statement for said M. F. Goggans Co. would be delivered to plaintiff's attorneys, but that said attorney for said defendant and said defendant personally have, all during said months of August and September, 1951, and on said 4th day of October, 1951, failed and refused to produce said financial statement, or any part thereof, although said bookkeeper informed plaintiff's attorneys on several occasions that said financial statement was being prepared and would be completed and delivered to plaintiff's attorneys within a few days.

That your affiant believes that the defendant M. F. Goggans is in fact in contempt of this Court by virtue of his failure to comply with the subpoena issued herein on the 2nd day of October, 1951.

That said M. F. Goggans admitted, while under oath at the time of taking said deposition, that he had used joint funds of the parties hereto to pay for his personal housing, in addition to the sum of \$150.00 per week allowed him by the Court in the restraining order dated August 10, 1951; that your affiant has personal knowledge that said defendant has dissipated the further sum of \$737.78 between the date of said restraining order and the

28th day of August, 1951, all in direct defiance, disobedience and disregard of the order of said Court dated August 10, 1951.

That said restraining order provided that any personal property in the possession of either party be delivered to the rightful owner thereof, but that the defendant has failed and refused to deliver to affiant a certain mimeograph machine in his possession, but has retained and withheld the same from the plaintiff herein, although plaintiff is the owner and entitled to the immediate possession thereof.

That your affiant believes that the said defendant is in fact in contempt of this Court by virtue of his disregard, defiance and disobedience of said court order dated August 10, 1951, and should be adjudged guilty of contempt for his failure to comply with said restraining order and said subpoena duces tecum.

/s/ RETA OSBORN GOGGANS.

Subscribed and sworn to before me this 8th day of October, 1951.

[Seal] /s/ JOHN C. HUGHES,
Notary Public for Alaska.

My commission expires: 4/9/55.

[Endorsed]: Filed Oct. 10, 1951.

said bookkeeper, according to the best knowledge and belief of your affiant under instructions from the defendant, has failed and refused to deliver said financial statement to the date hereof.

That for more than two years last past, and even during the time that affiant was actively engaged in managing the retail store operated by the parties hereto, said bookkeeper, acting on instructions from the defendant, has repeatedly refused to give plaintiff certain information from the books and records of said business.

That during the taking of the deposition of the defendant on the 4th day of October, 1951, defendant admitted, while under oath to tell the truth, that he has expended joint funds of the parties hereto for his personal housing, in direct disobedience, defiance and disregard of the restraining orders of the above-entitled Court; that when plaintiff herein examined the bank statements for said business for the month of August, 1951, she made a list of the checks written by the defendant which were in direct defiance, disobedience and disregard of said restraining orders, and said checks totalled \$747.78 in addition to and exclusive of a check for \$250.00 which the defendant gave to his attorney, all of which checks were not in the ordinary course of business of said M. F. Goggans Co., all to the great detriment of the financial investment of plaintiff herein.

That ever since the inception of the partnership between the plaintiff and the defendant, the said de-

defendant and the bookkeeper employed by the defendant against the expressed wishes of plaintiff, have made false and fraudulent entries and omissions in said books and records, to cover and bury the dissipation and squandering on the part of the defendant of the joint funds and assets of the parties hereto, all with the intent and purpose of defrauding and cheating the plaintiff of her rightful share of the profits of said business, and with the intent and purpose of avoiding the payment of the income taxes actually due from said business.

That your affiant has not been given access to the bank statements of said business for the month of September, 1951, but alleges that, according to the practice of said defendant for several years last past, he has dissipated and squandered many hundreds of dollars of joint funds of the parties hereto in drinking and hunting and fishing trips, during said September, 1951.

That the defendant remains away from the City of Anchorage, where said business is maintained, for many days each week and that during the last week of September, 1951, the defendant was absent from said City of Anchorage and said business for five days, on a duck hunting trip; that during the times that said defendant is away on such pleasure trips, said business is left without proper management and with no capable person in control of said business, but said business is left to the management of employees not capable of properly managing said business.

That since plaintiff was forced to leave said business on or about the 5th day of January, 1951, the defendant has, according to the sketchy and fragmentary information available to the plaintiff, added more than \$30,000.00 to the accounts payable of said business, to one creditor alone, and plaintiff has no knowledge of the added indebtedness to other creditors.

That the defendant and his attorney have delayed the trial of the above-entitled action in every conceivable manner, and your affiant prays this Honorable Court that the above-entitled action be set for trial at the earliest possible date, in order that the plaintiff be not further deprived of her just and rightful portion of the assets of said business, and in order that the defendant be not granted additional time within which to dissipate and squander the joint assets and cash of the parties hereto, as he has done in defiance of the restraining orders of this Court.

/s/ RETA OSBORN GOGGANS.

Subscribed and sworn to before me this 11th day of October, 1951.

[Seal] /s/ JOHN C. HUGHES,
Notary Public for Alaska.

My Commission expires: 4/9/55.

[Endorsed]: Filed Oct. 12, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF IN SUPPORT
OF MOTION FOR ORDER TO SHOW
CAUSE

United States of America,
Territory of Alaska—ss.

Reta Osborn, being first duly sworn, upon her oath, deposes and says:

That she is the plaintiff in the above-entitled action; that the decree of divorce entered in the above-entitled action on the 30th day of November, 1951, approved and adopted as a part thereof, the dissolution of partnership and property settlement agreement made between the parties hereto; that among other things, said agreement provided that the defendant pay to the plaintiff the sum of \$500.00 per month for a period of four years and four months from the date thereof; that the defendant has failed and refused to make said payments since the month of August, 1952, and is presently in default in the sum of \$3,500.00 in said payments.

That from said payments of \$500.00 per month to be received by the plaintiff from the defendant, the plaintiff was to pay the sum of \$250.00 per month toward retiring the mortgage on the real property set aside to the plaintiff by said property settlement and partnership dissolution agreement; that as long as payments were received from the defendant, said payments were made by the plain-

tiff according to the terms of said agreement; that the holder of said mortgage has threatened to foreclose the same unless said payments are brought up to date and the plaintiff is unable to meet said payments without the receipt of the moneys due and owing from the defendant, according to the terms of said partnership dissolution and property settlement agreement.

That the defendant is in contempt of this Court, as plaintiff verily believes, for his failure and refusal to comply with the terms and conditions of said decree of divorce and property settlement agreement, during the past seven months.

/s/ RETA OSBORN.

Subscribed and sworn to before me this 11th day of March, 1953.

[Seal] /s/ JOHN C. HUGHES,
Notary Public for Alaska.

My commission expires: 4/11/55.

[Endorsed]: Filed March 25, 1953.

In the District Court for the District of Alaska
Third Division

No. A-7094

RETA OSBORN GOGGANS,

Plaintiff,

vs.

MARLIN FERRIS GOGGANS, Also Known as
M. F. GOGGANS,

Defendant.

MEMORANDUM OPINION AND DECISION

Upon the motion of the plaintiff an Order was signed and filed herein on March 25, 1953, directed to the defendant and ordering him to show cause why he should not be held in contempt of court for his failure and refusal to comply with the terms of the Decree of divorce and property settlement and partnership dissolution heretofore made and filed in this case. Hearing was had thereon on April 7, 1953, and the defendant was examined at some length.

It appears without dispute that defendant is grossly in arrears in payment of the amounts which he agreed to pay in the property settlement agreement entered into between himself and the plaintiff and thereafter provided in the Decree of the Court. The defendant's testimony is to the effect that he has lost the business in which he and the

plaintiff were engaged prior to their divorce and has no funds out of which he can make the required payments. Shortly after the divorce between the parties hereto the defendant remarried. His present wife has two children by a former marriage.

While the defendant's testimony was not in every respect credible and while his demeanor on the witness stand manifested lack of complete candor, no substantial showing has been made that the defendant at the present time can make the payments required by the property settlement agreement and by the Decree. I have come to the conclusion that to commit him to prison for contempt until payments are made would serve no useful purpose and would in fact defeat the just demands of the plaintiff that the Decree be complied with.

Accordingly, the motion for punishment of the defendant for contempt is denied at this time and the hearing is continued until August 7, 1953, at four o'clock in the afternoon at which time further testimony may be taken, including the testimony of the defendant, with respect to the defendant's financial means and as to other factors which may be relevant to the issue here involved, the Court reserving the power to then commit the defendant for contempt if circumstances shall warrant.

It is further Ordered that the defendant appear in the courtroom at Anchorage, Alaska, on August 7, 1953, at four o'clock in the afternoon of said day and then and there submit himself to further

examination by counsel for either or both parties upon the issues raised by said motion.

Dated at Anchorage, Alaska, this 24th day of April, 1953.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed April 24, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF

United States of America,
Territory of Alaska—ss.

Reta Osborn, being first duly sworn, upon her oath, deposes and says:

That she is the plaintiff in the above-entitled action; that the partnership dissolution and property settlement agreement incorporated in and made a part of the decree of divorce entered in the above-captioned matter on the 30th day of November, 1951, provided, among other things, that the defendant pay to the plaintiff the sum of \$500.00 per month until the sum of \$26,000.00 had been paid by the defendant; that the defendant has failed and refused to make said payments since the month of August, 1952, and has paid nothing whatsoever since said date, and that the defendant is now thirteen months in arrears in said payments, amounting to the sum of \$6,500.00.

That the defendant is steadily employed in the office of the Post Engineers and has been so employed since immediately following the hearing of this matter in April, 1953, and is in receipt of a monthly salary in the approximate amount of \$573.00.

That the defendant's present wife and her two children by a former marriage have returned to Seattle, Washington to live and the defendant therefore has no dependents to support and is well able to make regular payments to plaintiff herein.

That the defendant is well able to borrow sufficient funds with which to pay the arrearages due the plaintiff.

/s/ RETA OSBORN.

Subscribed and sworn to before me this 10th day of September, 1953.

[Seal] /s/ JOHN C. HUGHES.

Notary Public for Alaska.

My commission expires: 4/9/55.

[Endorsed]: Filed September 11, 1953.

[Title of District Court and Cause.]

HEARING ON ORDER TO SHOW CAUSE
(Continued.)

Now at this time Hearing on Order to Show Cause is resumed in cause No. A-7094, entitled

Reta Osborn Goggans, Plaintiff, versus Marlin Ferris Goggans a/k/a M. F. Goggans, defendant came on regularly before the Court, Plaintiff present and with Edward V. Davis, of counsel, defendant present and with his counsel, George B. Grigsby, the following proceedings were had, to wit:

Argument to the Court was had by George B. Grigsby, for and in behalf of the defendant.

Argument to the Court was had by Edward V. Davis, for and in behalf of the plaintiff.

Argument to the Court was had by George B. Grigsby, for and in behalf of the defendant.

Whereupon, Court finds defendant guilty of contempt and sentences defendant to imprisonment until sum of \$1,500.00 is paid, and defendant given to 2:00 o'clock p.m. of Monday, September 28, 1953, to pay such sum or surrender himself to the United States Marshal.

Entered September 26, 1953.

[Title of District Court and Cause.]

**DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL ON BEHALF
OF PLAINTIFF**

Comes now Reta Osborn, the above-named plaintiff, and designates additional portions of the record in the above-entitled matter as follows:

1. Restraining order pendente lite filed August 10, 1951.
2. Affidavit of plaintiff filed October 2, 1951.
3. Affidavit of plaintiff filed October 10, 1951.
4. Affidavit of plaintiff filed October 12, 1951.
5. Affidavit of plaintiff filed March 25, 1953.
6. Memorandum opinion and decision filed April 24, 1953.
7. Affidavit of plaintiff filed September 11, 1953.
8. Minute order filed September 26, 1953.
9. This designation.

DAVIS, RENFREW &
HUGHES,

By /s/ EDWARD V. DAVIS.

Receipt of copy acknowledged.

[Endorsed]: Filed April 25, 1955.

In the United States Court of Appeals
for the Ninth Circuit

No. 14756

MARLIN FERRIS GOGGANS, Also Known as
M. F. GOGGANS,

Appellant,

vs.

RETA OSBORN,

Appellee.

DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL ON BEHALF
OF APPELLEE

Comes now Reta Osborn, the above-named appellee, and designates additional portions of the record in the above-entitled matter in accordance with her designation served and filed in the District Court for the District of Alaska, Third Division, on the 25th day of April, 1955, to the same extent as though set out in full herein.

Dated at Anchorage, Alaska, this 12th day of March 1956.

DAVIS, RENFREW &
HUGHES.

Attorneys for Appellee.

By /s/ EDWARD V. DAVIS.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed March 14, 1956.

